Tax Sandwich:

Made in Ireland

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US and Asian corporations looking to build a European, Middle East and African ("EMEA") hub are increasingly focused on Ireland as a business location. This article highlights some of the key structures used by multinational corporations as they grow their EMEA footprint out of Ireland.

As a low-tax onshore OECD-compliant EU location, Ireland holds a good supply of young, well–educated and multilingual staff. These features make Ireland the premier location from which to staff, build out and grow the critical mass necessary for a fully functioning EMEA hub.

Ireland's 12.5% Corporate Tax Rate and Access to Ireland's Treaty Network

Companies conducting trading activities in Ireland are liable to corporation tax at 12.5% on trading profits. Typically, such companies enjoy the benefits of access to Ireland's double tax treaty network as well as certain exemptions from withholding taxes embodied into Irish law and practice.

Unlike tax haven locations, Ireland's growing treaty network provides protection against other tax authorities that may seek to claim a portion of the profits earned by the Irish hub. In certain instances, where foreign tax authorities have sought to challenge the measure of profits attributable to the Irish hub, the Irish Revenue Commissioners have assisted the Irish hub in its discussions with the foreign tax authorities and agreed advance pricing agreements between the respective trading partners.

Whilst the Irish tax system now contains a transfer pricing system that enables multinationals to demonstrate that arm's length profits comparable to the activities carried on here are subject to tax in Ireland, its tax code is not cluttered with anti-avoidance legislation. Hence, a foreign multinational may establish operations in Ireland and accumulate cash offshore without risk of a controlled foreign companies challenge.

Similarly, the absence of detailed and aggressive rules that apply withholding taxes makes Ireland an attractive location to generate outflows of dividends, interest and royalties. And should the time come for an orderly exit from Ireland, the regime does provide means for foreign-owned companies to exit the country tax-free.

Ireland's full EU membership means that any pan-EU regulated activity that is compliant with Irish law can be passported into all other EU member states free of additional regulation. This is highly relevant to multiple sectors including regulated financial services or social networking hubs which hold or process EU consumer data.

Tax Structures in Ireland

Double Irish Sandwich

The colloquially known "Double Irish Sandwich" is a structure that builds upon the ability of US corporations to own non-US intellectual property in an Irish incorporated but non-Irish tax resident company (see Irishco 1 in Figure 1) and enter into a licensing agreement with an Irish incorporated and Irish tax-resident company (see Irishco 2 in Figure 1) that acts as the EMEA hub. As can be seen from Figure 1, Irishco 1 is resident in a tax haven like the Cayman Islands or Bermuda. A cost share arrangement between Irishco1 and the US parent allows the increase in value of developed IP to grow in an offshore jurisdiction.

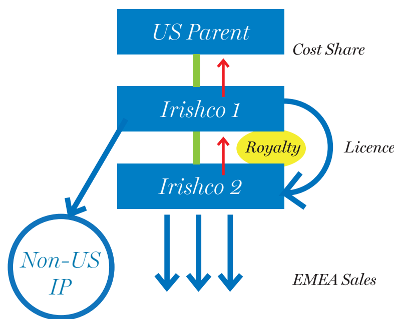

Figure 1

This structure enables pan-EMEA income earned by Irishco 2 to be shifted free of Irish taxes to Irishco 1. Irishco 2 can then enjoy the benefit of Ireland's double tax treaty protection from challenges by foreign authorities. For US purposes, both Irish companies are treated as one, giving rise to a deferral of US Federal tax until monies are repatriated Stateside. For new entrants in the Irish market to maintain the benefits of the Double Irish Sandwich, they will need to demonstrate that the transfer price payable by Irishco 2 to Irishco 1 represents an arm's length return.

Foreign tax authorities may seek to apply withholding taxes on income payable to an Irish EMEA hub. They attempt this by arguing that the payments are in fact to the company that is a tax resident in the Cayman Islands or Bermuda and that the treaty rates or EU absence of withold should not apply.

Clearly, if the Irish EMEA hub does in fact own the underlying intellectual property, good or service that is being provided to the end user in another EMEA country, this argument can be rebutted. Of key relevance is the degree of substance located in Ireland which can be used to demonstrate that the critical mass and hence beneficial ownership of IP is in fact located in Ireland.

Double Dutch Alternative

The"Double Irish Sandwich" is often compared and contrasted to the Double Dutch structure, illustrated in Figure 2. A Netherlands Antilles CV owns intellectual property and enters into a licence and cost share with a Dutch incorporated BV that acts as the EMEA hub. The margin of profit taxable at rates of 25% in the BV is the subject of a ruling given by the Dutch tax authorities. For US purposes, the CV/ BV structure is again treated as one and gives rise to a deferral of Federal tax until such time as profits are repatriated.

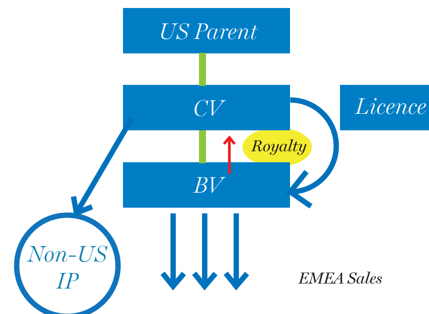

Figure 2

The Double Dutch structure is attractive for those wishing to establish substantive operations on the continental EU land mass. The long-term viability of building structures around offshore locations does however merit further analysis. With the US Presidential elections looming and continued OECD pressure on the havens, a variation to the Double Irish or Double Dutch structure may be necessary.

Irish / Luxembourg Sandwich

We occasionally advise groups that wish to own intellectual property in Luxembourg and license it into an Irish EMEA hub. For these groups, their end game is to get a tax deduction at 12.5% in Ireland on the licence fee, and then through a Luxembourg ruling, they can pay a sliver of tax in Luxembourg. For US tax purposes, the Irish and Luxembourg companies are treated as one and ignored until the funds are repatriated.

The Irish / Luxembourg Sandwich structure may diminish the Irish Revenue Commissioners' ability to assist the Irish EMEA hub's defence against any challenges from other tax authorities on the amount of tax assessable in Ireland rather than overseas. Similar questions of beneficial ownership of intellectual property also arise.

Conclusion - Just Plain Irish Please?

Despite all the colloquially known structures involving Ireland, Dutch, Luxembourg or Swiss variants there is no particular structure that suits any one business.

It is increasingly clear that all major economies will require extra cash to finance their borrowings in the future. Meanwhile, the continued acceptance that profits and monies can be built up in tax haven locations does not seem likely to continue. Focusing on countries such as Luxembourg, Switzerland, Malta or Cyprus as locations in which to own intellectual property rather than on the countries where the intellectual property is actually developed and sold, is likely to invite increased scrutiny.

At its simplest, dismantling double Irish structures into a one-tier plain Irish EMEA trading company may give rise to a robust structure that minimises overseas challenges. ■